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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-289

PRUNEYARD SHOPPING CENTER, ET AL.,
Appellants,

VS.

MICHAEL ROBINS, ET AL.,
Appellees.

**On Appeal From the Supreme Court
of the State of California**

SUPPLEMENTAL MOTION TO DISMISS

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In addition to their substantive arguments, appellants in their jurisdictional statement (at 11-12) offered a "conflict" on the property rights issue as a reason for granting plenary review. Appellees, in their Motion to Dismiss, inadvertently omitted their response to this argument. We do so now, so that our mistake does not mislead the Court into giving credence to the supposed conflict.

Simply put, the assertion that, in *Lenrich Associates v. Heyda*, 264 Or. 122, 504 P.2d 112 (Ore. 1972), the Oregon

Supreme Court "held . . . that the shopping mall owner's Fifth and Fourteenth Amendment property rights cannot be overcome by a state constitutional provision" (J. St. at 12) is erroneous. Only three of the six justices on that case joined the plurality opinion so stating. The remaining three justices either disagreed with that view* or found it unnecessary to reach the issue. Further, since *Lenrich* was decided before *Hudgens v. NLRB*, 424 U.S. 507 (1976), even the plurality view on the meaning of *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1942) should have little vitality today. Thus, the California Supreme Court's decision on the Fourteenth Amendment question is not in conflict with the holding of the Oregon Supreme Court or, so far as we are aware, any other court.

Respectfully submitted,

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*Justice Denecke in particular recognized the severe alteration in basic, long-understood concepts that *Lloyd Corp.* would *sub silentio* have worked, if read as the *Lenrich* plurality maintained. The theory, he noted, would "greatly restrict the rights of states and their subdivisions to regulate the use of property" (504 P.2d, at 117). As an example of the kind of cases such a theory would affect, he gave an Oregon case upholding a zoning ordinance prohibiting automobile wrecking yards in certain locations. *Id.*